

Amendment No. 1 to HB2165

**Curtiss
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 1954*

House Bill No. 2165

by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 46, Chapter 2, Part 3, is amended by adding a new section thereto, as follows:

Section 46-2-310.

(a) When the improvement care trust fund has become sufficiently large that the net earnings, as defined in Section 46-1-204, will ensure the permanent maintenance and upkeep of such cemetery, and the officers and board of directors are of the opinion that it is no longer necessary to continue to set aside twenty percent (20%) to the improvement care trust fund, or any part thereof, for the purpose of maintaining, keeping up and beautifying such cemetery, the board of directors may, in a regular or special meeting, pass a resolution declaring such belief.

(b) The cemetery company shall then be authorized to file a petition in the name of the company in the chancery court of Davidson County stating the passage of such resolution and other pertinent facts as it may desire, and asking that the cemetery company no longer be required to continue to make contributions to the improvement care trust fund or that the contributions be reduced. The petition shall be filed against the commissioner of commerce and Insurance. The petition shall be accompanied by an audited balance sheet prepared by a Tennessee certified public accountant showing the financial position of the cemetery company from the date of the petition seeking relief. All financial information submitted shall be kept strictly confidential and shall be subject to a protective order limiting access to such information to the court and the attorney representing the commissioner.

(c) At the final hearing on the petition, the petitioner shall have the burden of proving its entitlement to relief by a preponderance of the evidence. In reaching its

decision, the court shall consider at least the following factors, and shall state upon the record its findings:

(1) The financial position of the cemetery company on the date the petition seeking relief was filed;

(2) Whether the net earnings from the improvement care trust fund will be sufficient to provide future maintenance and upkeep of the cemetery for perpetuity; and

(3) The number of lots or grave spaces intended to be used for interment purposes versus the number of lots or grave spaces that have already been sold and the likely impact of the future sale of lots or grave spaces on the cost of maintenance and upkeep.

(d) Upon a final hearing of the issues, the chancery court is authorized to pronounce such decree as in the opinion of the court from the proof and facts, either refusing any relief whatsoever or granting all of the relief prayed for, or granting such partial relief that may appear proper to the court. The case shall be kept on the docket of the court, subject to such further orders and decrees as may from time to time appear proper upon such additional showing as may be made under any supplemental petition filed either by the original complainants, or on behalf of the state, or by any lot owner, or descendant or next of kin of a lot owner, who may be entitled to any relief.

(e) In no event shall any relief granted under this part affect the cemetery owner's other obligations under title 46, chapter 1.

(f) The cost and expenses of the proceeding in subsections (a)-(d) shall be taxed against and paid by the complainant, including reasonable and necessary attorney's fees to the defense attorney, to be determined by the court. The cost and expense shall be paid out of the complainant's general operating account and shall not be paid out of the principal of the improvement care trust fund.

(g) In the event the commissioner determines that any of the following events have occurred, any relief granted by the court to the cemetery company shall

immediately terminate and required contributions as set forth in Section 46-1-204 shall be resumed without further orders of the court:

(1) A finding by the commissioner that the balance of the improvement care trust fund has decreased by at least fifteen percent (15%) below the fair market value of the trust fund balance as of the date that the petition was filed;

(2) Any sale or transfer that requires notice to the commissioner pursuant to Section 46-1-107; or

(3) Purchase of additional land by the cemetery company. The cemetery company shall provide notice of such purchase to the commissioner by certified mail within thirty (30) days of the purchase.

(h) Notice of any such event in subsection (g) shall be provided by the commissioner to the cemetery company by certified mail and the cemetery company shall resume its obligation to make contributions to the improvement care trust fund beginning with transactions occurring thirty (30) days following receipt of such notice unless it challenges the accuracy of such determination. Any challenge shall be resolved by the chancery court of Davidson County in accordance with subsection (d), with court costs taxed to the petitioner.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.